IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 8, 2006 Session

JAMES H. HARNESS v. BECHTEL JACOBS COMPANY, LLC., SAFETY AND ECOLOGY CORPORATION, THE RETECH GROUP, INC., and T.A.G. TRANSPORT, INC.

Direct Appeal from the Circuit Court for Anderson County
No. A2LA0044 Hon. Donald E. Elledge, Circuit Judge

No. E2006-00194-COA-R3-CV - FILED JANUARY 3, 2007

Plaintiff was injured when the truck he was operating overturned at the dump site, due to improper loading allegedly caused by defendants. The Trial Court granted defendants summary judgments on grounds they were shielded from the tort claim by the Workers' Compensation Act. On appeal, we affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and SHARON G. LEE, J., joined.

Stephen W. Gibson and Ronald L. Grimm, Knoxville, Tennessee, for appellant.

Summer H. Stevens, Judith A. DePrisco and Rockforde D. King, Knoxville, Tennessee, and S. Morris Hadden, Kingsport, Tennessee for appellees.

OPINION

Plaintiff brought this action against Bechtel Jacobs Company, LLC ("Bechtel"), Safety and Ecology Corporation ("SEC"), and The Retech Group, Inc. ("Retech"), alleging that plaintiff was employed by Kindrick Trucking, and that defendants loaded the truck plaintiff was

driving for Kindrick on February 1, 2001, with debris to be taken to the Y-12 landfill and dump, and when he attempted to dump the debris, the truck was so overloaded and the debris was packed in so tightly that the truck would not dump properly, which caused the truck to overturn, injuring plaintiff.

Bechtel moved for summary judgment, asserting that all three defendants were principal and/or intermediate contractors on the project, and that pursuant to Tenn. Code Ann. §50-6-113, they are covered by workers compensation law to the same extent as the immediate employer of the injured worker, and that the defendants were immune from tort liability pursuant to Tenn. Code Ann. §50-6-108(a), which provides that workers compensation benefits are the exclusive remedy for an injured worker.

Bechtel filed a Statement of Undisputed Material Facts, wherein it stated that Bechtel contracted with SEC on June 1, 2000, to carry out the K-1001 building demolition project in Oak Ridge, and that SEC, acting as general contractor, subcontracted with Retech for crane services, asbestos abatement, and decontamination and decommissioning, which including hauling away the debris to the Y-12 landfill site. Retech hired Kindrick to haul away the debris, and plaintiff was injured during the course of doing that work for Kindrick. Bechtel stated that plaintiff filed for and received workers compensation benefits from Kindrick.

The other defendants likewise filed Motions for Summary Judgment.

Subsequently, the Trial Court entered an Order Granting Defendants' Motions for Summary Judgment, holding there was no genuine issue of material fact, and that defendants were entitled to judgment as a matter of law.

On appeal, plaintiff asserts that for defendants to prevail on their defense of immunity from tort liability by virtue of Tenn. Code Ann. §50-6-108(a), they must show that the injury "occurred on, in or about the premises on which the principal contractor has undertaken to execute work or which are otherwise under the principal contractor's control or management." Tenn. Code Ann. §50-6-113(d). Plaintiff argues that he was injured not at the demolition site, but rather at the dump site, which was the Y-12 landfill, which is under the control and management of DOE's Y-12 facility employees. Further, that Kindrick and TAG were vendors, not subcontractors, and thus Tenn. Code Ann. §50-6-113 does not apply.

Defendants counter that they are all principal, intermediate, and/or subcontractors, and as such are immune from tort liability to the same extent as plaintiff's immediate employer, pursuant to Tenn. Code Ann. §50-6-108 and 113.

Defendants concede that in order for this immunity to apply, the injury must have occurred on or about "premises on which the principal contractor has undertaken to execute work or that are otherwise under the principal contractor's control or management." Tenn. Code Ann. §50-6-113(d). They point to Tennessee case law that establishes that the designated dump site at the

Y-12 landfill would qualify as premises on which the principal contractor had undertaken to execute work.

The Code section provides that "A principal or intermediate contractor, or subcontractor shall be liable for compensation to any employee injured while in the employ of any of the subcontractors of the principal, intermediate contractor, or subcontractor and engaged upon the subject matter of the contract to the same extent as the immediate employer." Tenn. Code Ann. §50–6-113(d) states that "This section applies only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or that are otherwise under the principal contractor's control or management." Tenn. Code Ann. §50–6-108 provides that workers comp shall be the injured worker's sole remedy, and that the employer is immune from tort liability.

Defendants cite to the Supreme Court case of *Davis v. J&B Motor Lines*, 245 S.W.2d 769 (Tenn. 1952), wherein the Court held that a public highway, where an accident occurred that injured an employee of a subcontractor trucking company, would be deemed such a "premises" pursuant to the workers comp statute, since the principal contractor had a contract which involved the hauling of freight on highways. The Court explained:

> In innumerable cases, this Court has approved the award of compensation to employees who were injured on premises which were not within the control of the employer except to the extent necessary for the performance of his contract 'on which the principal contractor has undertaken to execute work.' It has never been suggested, and cannot successfully be suggested, under a proper construction of the Act, that because the 'premises' are the property of the Government, as are the highways, that that should defeat the operation of the Workmen's Compensation Act growing out of a private contract to be performed on Government property.

Id. at 770.

Defendants also rely on *Bell v. Harrell et al.*, 1995 Tenn. App. LEXIS 684 (Tenn. Ct. App. Oct. 20, 1995), wherein the plaintiffs had been hired to drive vehicles from one location to another for a car dealership. The insurer argued that there should be no coverage because the injuries occurred on the premises of a body shop that was not owned or controlled by the defendant dealership. We stated:

> This narrow construction of this section of the Workers' Compensation Act has been long since rejected by the courts of this state. Plaintiffs were employed for the purpose of driving these vehicles wherever they might be located – on the streets and highways of Tennessee or any other state, or in and around the premises of body shops or the lots of RSM or other automobile dealers.
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> Here, there is no dispute that plaintiff was required to take the debris from the K-1001

demolition site and dump it at the Y-12 landfill, as this work was required of Bechtel and its subcontractors. Plaintiff made this admission in his response to the summary judgment motions. Accordingly, the injury which occurred in the process of dumping the debris at the Y-12 landfill, occurred on premises on which the principal contractor had undertaken to execute work, and the cited authority controls.

Next, plaintiff argues that a genuine issue of material fact exists regarding whether Kindrick and TAG were subcontractors pursuant to the statute. Plaintiff points to correspondence between SEC and Bechtel regarding the fact that SEC considered waste transportation suppliers to be "vendors" and not subcontractors, such that they did not have to submit subcontractor prequalification documentation.

The Supreme Court has long-recognized that the language chosen by the legislature, i.e. "principal or intermediate contractor or subcontractor", is all inclusive, and contains no qualification, definition, or interpretation. *McVeigh v. Brewer*, 189 S.W.2d 812 (Tenn. 1945). The Court said that these words were well-recognized, in common use, and had a generally accepted meaning. *Id.* The Court stated that a contractor was one who, for consideration, undertook to carry out any part of a project or other employment. *Id.* In that case, the Court found that a company hired to furnish stone for the roadway being built was a subcontractor pursuant to the statute. *Id.* The Court said that the principal contractors are made liable for injuries sustained by "employees of subcontractors arising out of and in the course of their employment, whether such subcontractors be independent contractors or otherwise, provided that at the time of the injury, the employee was engaged upon the subject-matter of the general contract, and provided, further, that the injury occurs on, in, or about the premises on which the principal contractor has undertaken to do work", pursuant to the statute, which the Court found to be plain and unambiguous. *Id*. at 815.

The Supreme Court has also held that provisions in contracts between the parties do not control on the question of whether the workers comp statute applies, and where the facts are basically undisputed, it is a question of law for the courts. *Stratton v. United Inter-Mountain Telephone Co.*, 695 S.W.2d 947 (Tenn. 1985). In *Stratton*, the Court quoted from and relied upon Tenn. Code Ann. §50-6-114, which states that "No contract or agreement, written or implied, or rule, regulation, or other device, shall in any manner operate to relieve any employer . . . of any obligation created by [the Worker's Compensation Act]". *Accord; Davis* and *Bell*, *Campbell v. Dick Broadcasting*, 883 S.W.2d 604 (Tenn. 1994); *Mouser v. Buckhead Construction Co., et al.*, 2006 Tenn. App. LEXIS 434 (Tenn. Ct. App. June 28, 2006). The record before us establishes that the workers compensation statute applies to these parties.

Finally, plaintiff argues that application of the Supreme Court's opinion in *Oliver v. Prologis Trust*, 2004 WL 1933377 (Tenn. Aug. 31, 2004) to the facts herein, creates a genuine issue of material fact. The opinion deals with whether Prologis, the owner of the building where the repair work was being done, was a principal contractor within the meaning of Tenn. Code Ann. §50-6-113, and the Court found that it was not because Prologis did not control the repair contractor's work, did not control its daily activities, nor its employees or hours. *Id.*

The *Oliver* case is not analogous, because Bechtel is clearly a principal contractor within the meaning of the statute, and SEC, Retech, and TAG were subcontractors pursuant to the foregoing. There is no dispute that plaintiff was injured while engaged in the subject matter of the contract, and the injury occurred on premises where the contractor had undertaken to perform work. *See Mouser*. We hold that no genuine issues of material fact is established on this issue. *See, Slaughter v. Duck River Elec. Membership Corp.*, 102 S.W.3d 612 (Tenn. Ct. App. 2002).

We affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to James H. Harness.

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HERSCHEL PICKENS FRANKS, P.J.